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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/340,771 06/28/99 MYERS

D 13944

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IM71/0706

EXAMINER

PRATT, C	
ART UNIT	PAPER NUMBER

1771  
DATE MAILED:

07/06/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/340,771

Applicant(s)

MYERS, DAVID LEWIS

Examiner

Christopher C. Pratt

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 12-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to polymeric composition, classified in class 524, subclass various.
- II. Claims 12-23 and 25-26, drawn to nonwoven web, classified in class 442, subclass 334.
- III. Claim 24, drawn to a multilayered nonwoven laminate, classified in class 442, subclass 381.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as fiber for reinforcing polymeric films and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Inventions I and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a fiber for reinforcing polymeric films and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Inventions II and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a single nonwoven layer or as a three layered meltblown laminate and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Doug Tulley on 4/17/01 a provisional election was made with traverse to prosecute the invention of group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. Applicant's file indicates an IDS was submitted 10/1/99, however a copy of this IDS is not present in the case. Please resubmit this IDS for consideration.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "porous substrate" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-7 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Rousseau et al (6002017).

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Rousseau is concerned with the creation of a nonwoven electret filter web (col. 11, lines 45-47). Said web comprising a first thermoplastic polymer and a thermoplastic telomer present in amounts anticipating applicant's claimed amounts (col. 2, lines 35-50, col. 6, lines 54-55, col. 9, lines 58-61). Said first polymer comprises propylene or ethylene and said telomer comprises tetrafluoroethylene (col. 6, lines 32-55).

Rousseau discloses the use of applicant's claimed functional end groups (col. 8, lines 18-19).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rousseau et al (6002017).

With respect to said telomer, Rousseau teaches the use of alkenes as a linking group having 1 or 2 carbon atoms (col. 8, lines 15-20). It would have been well within the level of ordinary skill in the art to use a linking group having 3 carbon atoms. The skilled artisan would have been motivated to utilize propylene by the desire to utilize a known functional equivalent of ethylene based on the commercial availability of the two polymers.

**Conclusion**


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rousseau et al (5968635) and Rousseau et al (5976208) both teach elements of applicant's invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2351.

Christopher C. Pratt  
June 29, 2001

  
BLAINE COPENHEAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700



NOTICE OF DRAFTSPERSON'S  
PATENT DRAWING REVIEWThe drawing(s) filed (insert date) 06/28/99 are:A. ☐ approved by the Draftsperson under 37 CFR 1.84 or 1.152.B. ☒ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. The Examiner will require submission of new, corrected drawings when necessary. Corrected drawing must be submitted according to the instructions on the back of this notice.

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| <p>1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings:<br/>Black ink. Color.<br/>____ Color drawings are not acceptable until petition is granted.<br/>Fig(s) _____<br/>____ Pencil and non black ink not permitted. Fig(s) _____</p> <p>2. PHOTOGRAPHS. 37 CFR 1.84 (b)<br/>____ 1 full-tone set is required. Fig(s) _____<br/>____ Photographs not properly mounted (must use bristol board or photographic double-weight paper). Fig(s) _____<br/>____ Poor quality (half-tone). Fig(s) _____</p> <p>3. TYPE OF PAPER. 37 CFR 1.84(e)<br/>____ Paper not flexible, strong, white, and durable.<br/>Fig(s) _____<br/>____ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not accepted. Fig(s) _____<br/>____ Mylar, velum paper is not acceptable (too thin).<br/>Fig(s) _____</p> <p>4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:<br/>____ 21.0 cm by 29.7 cm (DIN size A4)<br/>____ 21.6 cm by 27.9 cm (8 1/2 x 11 inches)<br/>____ All drawing sheets not the same size.<br/>Sheet(s) _____<br/>____ Drawings sheets not an acceptable size. Fig(s) _____</p> <p>5. MARGINS. 37 CFR 1.84(g): Acceptable margins:<br/>Top 2.5 cm Left 2.5cm Right 1.5 cm Bottom 1.0 cm<br/>SIZE: A4 Size<br/>Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm<br/>SIZE: 8 1/2 x 11<br/>Margins not acceptable. Fig(s) _____<br/>____ Top (T) _____ Left (L)<br/>____ Right (R) _____ Bottom (B)</p> <p>6. VIEWS. 37 CFR 1.84(h)<br/>REMINDER: Specification may require revision to correspond to drawing changes.<br/>Partial views. 37 CFR 1.84(h)(2)<br/>____ Brackets needed to show figure as one entity.<br/>Fig(s) _____<br/>____ Views not labeled separately or properly.<br/>Fig(s) _____<br/>____ Enlarged view not labeled separately or properly.<br/>Fig(s) _____</p> <p>7. SECTIONAL VIEWS. 37 CFR 1.84 (h)(3)<br/>____ Hatching not indicated for sectional portions of an object.<br/>Fig(s) _____<br/>____ Sectional designation should be noted with Arabic or Roman numbers. Fig(s) _____</p> | <p>8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)<br/>____ Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s) _____</p> <p>9. SCALE. 37 CFR 1.84(k)<br/>____ Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction.<br/>Fig(s) _____</p> <p>10. CHARACTER OF LINES, NUMBERS, &amp; LETTERS. 37 CFR 1.84(i)<br/>____ Lines, numbers &amp; letters not uniformly thick and well defined, clean, durable, and black (poor line quality).<br/>Fig(s) <u>1</u></p> <p>11. SHADING. 37 CFR 1.84(m)<br/>____ Solid black areas pale. Fig(s) _____<br/>____ Solid black shading not permitted. Fig(s) _____<br/>____ Shade lines, pale, rough and blurred. Fig(s) _____</p> <p>12. NUMBERS, LETTERS, &amp; REFERENCE CHARACTERS. 37 CFR 1.84(p)<br/>____ Numbers and reference characters not plain and legible.<br/>Fig(s) _____<br/>____ Figure legends are poor. Fig(s) _____<br/>____ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1)<br/>Fig(s) _____<br/>____ English alphabet not used. 37 CFR 1.84(p)(2)<br/>Figs _____<br/>____ Numbers, letters and reference characters must be at least .32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3)<br/>Fig(s) _____</p> <p>13. LEAD LINES. 37 CFR 1.84(q)<br/>____ Lead lines cross each other. Fig(s) _____<br/>____ Lead lines missing. Fig(s) _____</p> <p>14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(i)<br/>____ Sheets not numbered consecutively, and in Arabic numerals beginning with number 1. Sheet(s) _____</p> <p>15. NUMBERING OF VIEWS. 37 CFR 1.84(u)<br/>____ Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s) _____</p> <p>16. CORRECTIONS. 37 CFR 1.84(w)<br/>____ Corrections not made from prior PTO-948 dated _____</p> <p>17. DESIGN DRAWINGS. 37 CFR 1.152<br/>____ Surface shading shown not appropriate. Fig(s) _____<br/>____ Solid black shading not used for color contrast.<br/>Fig(s) _____</p> |
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COMMENTS

DRAWER LAMDATE 08/06/99TELEPHONE NO. (703) 308-0366

ATTACHMENT TO PAPER NO. \_\_\_\_\_

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### 1. Correction of Informalities--37 CFR 1.85

File new drawings with the changes incorporated therein. The application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call if the Office is unable to match the drawings to the proper application, should be placed on the back of each sheet of drawings in accordance with 37 CFR 1.84(c). Applicant may delay filing of the new drawings until receipt of the Notice of Allowability (PTOL-37). Extensions of time may be obtained under the provisions of 37 CFR 1.136. The drawing should be filed as a separate paper with a transmittal letter addressed to the Drawing Processing Branch.

### 2. Timing for Corrections

Applicant is required to submit **acceptable** corrected drawings within the three-month shortened statutory period set in the Notice of Allowability (PTOL-37). If a correction is determined to be unacceptable by the Office, applicant must arrange to have acceptable corrections resubmitted within the original three-month period to avoid the necessity of obtaining an extension of time and paying the extension fee. Therefore, applicant should file corrected drawings as soon as possible.

Failure to take corrective action within set (or extended) period will result in **ABANDONMENT** of the Application.

### 3. Corrections other than Informalities Noted by the Drawing Review Branch on the Form PTO-948

All changes to the drawings, other than informalities noted by the Drawing Review Branch, **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.